CONTESTED ELECTION.

LOWRY vs. WHITE.

SPEECH

OF

HON. WILLIAM C. OATES,

OF ALABAMA,

IN THE

HOUSE OF REPRESENTATIVES,

MONDAY, FEBRUARY 6, 1888.

WASHINGTON.
1888.

Contested Election—Lowry vs. White.

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The House having under consideration the following resolutions:

"*Resolved, first*, That James B. White, not having been a citizen of the United States for seven years previous to the 4th of March, 1887, is not entitled to retain his seat in the Fiftieth Congress of the United States from the Twelfth Congressional district of Indiana.

"*Resolv d, second*, That Robert Lowry, not having received a majority of the votes cast for Representative in the Fiftieth Congress from the Twelfth Congressional district of Indiana, is not entitled to a seat therein as such Representative"—

Mr. OATES said:

Mr. SPEAKER: At the last Congressional election in the Twelfth district of Indiana Mr. Lowry was the Democratic candidate and Captain White was the Republican candidate, and was elected over Lowry. The latter contested White's election. The majority, including every Democratic member, of the Committee on Elections have made a report against White's eligibility. He is a native of Scotland, and began his residence in Indiana many years ago. He legally declared his intention to be naturalized and to become a citizen of the United States in 1858.

The majority of the committee report that he never did complete that intention and never was naturalized until a few days prior to his election; and that under the Constitution of the United States he, not having been a citizen for seven years, was ineligible to the office of Representative in Congress. The minority of the committee, composed entirely of Republicans, report that he was naturalized in 1865 and received a certificate thereof, which has since been lost or destroyed; that, although no judgment can be found upon the records of the court, nevertheless his naturalization can legally be and has been proven by parol evidence.

This statement sets forth the legal phase of the controversy in this case, to which alone I shall speak. I do not care whether the determination of this case will have any effect upon the voters of foreign birth in favor of the one party or the other. It is our duty to put on our manhood, leave demagogy and policy in the rear, and assert here what the law, the Constitution, and our oaths of office require of us.

Mr. Speaker, the limited time which I have had for the investigation of this case has been devoted to its legal aspects. I congratulate the minority of the Committee on Elections upon their well-conducted battle on this floor. I confess that there is some demoralization on this side of the Chamber, produced by the well-directed fire of gentlemen on the other side in favor of the contestee. I felt this on Saturday, because I had not then had time to investigate this case as I desired. But I have since considered the question in its legal aspect—which is the important one—and not with any partisan bias whatever, because I be-

lieve that partisan considerations should have no place in determining a question of this kind.

This case is important, sir, as a precedent. It must be conceded that the sitting member was overwhelmingly elected; and the only question is as to his eligibility under the Constitution to a seat on this floor. If he is eligible, no one would vote more unhesitatingly in favor of his retention of the seat than I would, without regard to his political opinions.

But, sir, upon such investigation as I have had the opportunity to make, I totally dissent from the views which some gentlemen have so freely expressed on this floor, and which have been greeted by the applause of gentlemen in sympathy with them—gentlemen whose judgments were, perhaps, warped by that sympathy, and who, not having thoroughly examined the real question at issue, were influenced by a very natural inclination in favor of a member who is acknowledged to have been elected by a large majority.

Now, the first fact in this case which is misleading is that under the constitution and laws of the State of Indiana, as in my own State, an alien who has legally declared his intention to become a citizen can vote and hold office. This circumstance presents an anomaly when you come to test the qualification of a person for a seat as a member of Congress, for under the law and constitution of my own State—and I presume it is so in the State of Indiana—a man may be eligible in one sense, as a member of Congress, and yet not in another. By section 2, of Article I, of the Constitution, it is provided:

> The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

But the Constitution further provides:

> No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

An alien may, by declaring his intention to become a citizen, under the constitution of many of the States, my own included, be a voter and eligible as a member to the most numerous branch of the Legislature, and yet not eligible to the office of Representative in Congress. I regard such a provision in a State constitution as unfortunate and mischievous. No doubt the sitting member's constituents, not aware of the requirements of the Constitution of the United States, believed Captain White to be eligible when they voted for him.

The question of fact which presents any difficulty is as to the sufficiency of the evidence, if competent to show that the sitting member completed his naturalization more than seven years before his election. Admitting, for the sake of the argument, its sufficiency, the question arises, is it presented here in legal and admissible form?

Just at this point there is a wide divergence of opinion among members. I, sir, agree with the majority of the committee. If Captain White, the sitting member, has failed to show by legal evidence that he was naturalized by a court of competent jurisdiction at least seven years before his election, he is not entitled to a seat in this House, I care not by what majority he was elected. Let us examine the question.

It is, I believe, conceded by all that naturalization requires judicial action—a proceeding, proof, the oath, the order of court, and the judgment. What, then, is a judgment? A judgment is—

> The final determination of the rights of the parties in the action. (New York Code of Procedure.)

Judgment:

The decision or sentence of a court on the main question in a proceeding, or on one of the questions, if there are several. (Rapalje and Lawrence's Law Dictionary.)

Judgment:

The authenticated decision of the court, obtained in a suit, upon the relative claims of the parties therein submitted; the sentence of the law pronounced by the court upon the matters presented by the record of proceedings in a suit. (Abbott's Law Dictionary.)

Whenever the proofs are submitted, the oath taken, and the judicial mind passes upon it, and thus gives voice to the law declaring in favor of the applicant's right to become a citizen of the United States, this is the judgment. It is perfect up to this point, but stopping here it can neither be proven nor enforced. It must be enrolled or recorded, or some record made thereof.

Judgments do not and can not rest in parol. Where the judicial mind has passed upon a question within its jurisdiction and an imperfect record has been made thereof, it may be amended subsequently *nunc pro tunc;* or if a judgment be perfectly enrolled or entered of record and the record is destroyed, it may be re-established in the court where rendered, and in some cases, where it comes in collaterally, it may be proved by parol. But in no case can it be thus proven where the beneficiary founds a right upon it or where the right he claims depends upon its existence.

The judgment itself, or a certified copy thereof, is the highest, best, and only competent evidence to prove its existence and contents. The judgment of the court admitting the contestee to citizenship is one thing, the proof of it is quite another. The friends of the contestee confound the two, which produces all the fog and misunderstanding in this case. I say it is not a judgment complete until a record is made of it; and the friends of contestee do not claim that any record ever was made of the proceedings of the court by which he claims to have been naturalized, except a certificate which he says that he had, but can not produce it.

Now, the gentleman from Massachusetts [Mr. COLLINS] and others rely on the case in 6 Cranch, which is about the strongest on their side of the question; therefore I will invite the attention of the House to it, as an examination of it fails to bear out their assertions. The certificate in that case is as follows:

At a district court held at Suffolk, October the 14th, 1795, William Currie, late of Scotland, merchant, who hath migrated into this Commonwealth, this day in open court, in order to entitle himself to the rights and privileges of a citizen, made oath that for two years last past he hath resided in and under the jurisdiction of the United States, and for one year within this Commonwealth, and also that he will support the Constitution of the United States, and absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, or other state whatsoever, particularly to the King of Great Britain.

A copy.
Teste: JOHN C. LITTLEPAGE.

The original memorandum made upon the minutes of the court was as follows:

At a district court held at Suffolk, October the 14th, 1795, William Currie, native of Scotland, migrated into the Commonwealth, took the oath, etc.

Now, sir, while that was defective in not containing all the recitals which the law required, yet it contained enough, with that which was stated and entered upon the record, that when it came to be dealt with collaterally the court held it to be sufficient.

The daughter of Currie after his death brought a suit for the land of which he died seized, and the plea was that she was an alien and could not recover it. She replied that she was the daughter of an alien who had been naturalized. After this proof was brought in there was no

response from any one—no contradictory evidence offered—and the court held that this, while a defective record, was sufficient. Under the law which permits certain defective records to be explained by parol, that evidence was competent and sufficient, no contrary testimony appearing. Now, sir, that decision does not sustain gentlemen in this case at all.

What is the case here? It is not that a record was made. It is not that there is a certificate and defective record, but of no record at all.

I do not profess to be familiar with the evidence in the record of this case; but whether the sitting member has produced here evidence sufficient to have entitled him to a record of naturalization and certificate in the court where he says he obtained it, is unimportant, because wholly inadmissible in the form it is here presented.

Mr. Speaker, if there ever was a certificate, and I may concede for the purpose of my argument that there was, the sitting member has not done that which it was his duty to do to entitle him to the benefit of it and the judgment, which he does not even allege was ever entered of record. I dissent from the proposition that a man in whose favor a judgment of a competent court has been rendered and never entered can go on in a case like this, take the oath, and become entitled to all the privileges and rights of a citizen without doing something more.

Why, sir, the judgment in such a case confers no higher right or privilege, that makes a different case from judgments rendered in other proceedings, than those, for instance, where a citizen sues and obtains a judgment for property or money, which judgment has never been entered. Can any one maintain an action upon a judgment which is never entered or enrolled?

I appeal to every lawyer in this House to answer this point. If A sues, and the judicial mind passes upon the question and awards him $50,000, yet the clerk has never entered it, A does not look into the fact and ascertain whether there has been a compliance on the part of the clerk, or does not compel the performance of this ministerial duty.

The clerk of course fails to issue an execution upon the judgment because it was never entered of record, and when A sues upon that judgment or pursues the defendant into another jurisdiction and sues upon it to obtain his money, as he would or might have to do, and the defendant pleads *nul tiel record*, can the plaintiff sustain his claim by setting up the fact that the judicial mind has passed upon his claim and adjudged him to be entitled to the award of $50,000 without showing that judgment? Would the court receive any other evidence of that judgment than the record itself or a certified copy thereof?

I apprehend that there is no lawyer here who will risk his reputation by asserting the contrary. In the present case the contestee asserts his right to retain his seat upon the floor of the House by virtue of a judgment which rests alone in the judicial mind—an intangible thing, like an immaterial substance, and with no legal or competent proof to establish it He asks this House to trust to the slippery memory of man rather than to the solemn record of a court, which imports absolute verity.

If the contestee had a judgment against me for money or property, and there was no record evidence of it, as in this case, and he were to sue me upon his judgment, and I should reply *nul tiel record*, no court would receive parol evidence of his judgment to overturn my plea. He who founds a right upon a judgment must produce that judgment or show that it once existed of record in due form and has been destroyed. The contestee's proof utterly fails to come up to either of these requirements.

Now, Mr. Speaker, as to the necessity of entering of record judgments,

I will claim the attention of gentlemen for a few moments while I read an extract from Freeman on Judgments.

The promptings of the most ordinary prudence suggest that whatever, in the affairs of men, has been so involved in doubt and controversy as to require judicial investigation, ought, when made certain by a final determination, to be preserved so by some permanent and easily understood memorial. Hence all courts, and all tribunals possessing judicial functions, are required by the written or unwritten law, and often by both, to reduce their decisions to writing in some book or record required to be kept for that purpose. The requirement is believed to be of universal application.

Several decisions covering the point are referred to, and the text proceeds:

So that if any judgment or decree of any court, whether of record or not of record, whether subordinate or appellate, fails to be entered upon its record, the failure is attributable to the negligence or inadvertence of its officers and not to the countenance and support of the law.

Then again—

That which the court performs judicially, or orders to be performed, is not to be avoided by the action or want of action of the judges or other officers of the court in their ministerial capacity. In the case of judgments they must first be entered upon the record before they are admissible as evidence in other courts.

Mark the language—

Must first be entered upon the record before they are admissible in evidence in other courts. For this purpose they are not otherwise perfect. The record, if not made up, or if lost or destroyed, should be perfected or replaced by appropriate proceedings in the court where the judgment was pronounced.

Mr. Speaker, if there was a judgment which was never entered, or if there was a judgment which was evidenced only by the certificate issued to Captain White, and that certificate, as he says, is lost or destroyed, it was incumbent upon him to avail himself of the unrecorded judgment, and to have taken affirmative action in the court where it was obtained, to first establish it, and then he could have brought a certified transcript of it and his certificate here, and have met the plea or objection that he is not a naturalized citizen of the United States, and the proof would not have been questionable. But as it is, he is here asserting his naturalization without any legal proof to establish it. It is no hardship to require this. Our too liberal naturalization laws are easily complied with. What hardship is there in requiring him to produce legal evidence that he is entitled under the Constitution of the United States to be a member of this Congress? I can see none, and I fear none of the dire consequences predicted by some gentlemen on the Democratic side of the Chamber in the event of the contestee being unseated for the want of such proof.

Why, sir, the wisdom of ages has decreed against tracing the judicial determinations of the courts of the country through the slippery memory of men, which is full of uncertainty, and fades with time. The position of gentlemen upon the other side of this question, when stripped of its fustian, gaudy rhetoric, and misleading eloquence, which pronounces any man who ever served in the Union Army incapable of telling a lie, exhibits the nude deformity of an assertion that the solemn judgment of a court can rest in parol, which is an absolute absurdity in the estimation of every gentleman who has ever become familiar with the mere horn-books of the law.

Mr. MILLIKEN. Will the gentleman allow me a question?

Mr. OATES. I am unable to do so, I regret to say, as my time is limited.

Mr. Speaker, the position I have assumed here has not been taken recklessly, for I have the authorities to sustain me.

In a recent case in North Carolina, sixty-fourth volume Supreme Court Reports, that court held that parol evidence was in no case admissible to prove a judgment; that it must be first re-established under the law for that purpose in the court that rendered it.

Why, sir, if it were permissible to come here into this forum and prove by parol what the judicial authority in Indiana passed upon, how uncertain would be the proceeding? It would utterly destroy the safeguards of the law, which require these proceedings before a court to naturalize an alien and entitle him to the rights of citizenship. Let him go to the court where the proceedings are had, and if there is any fault in that court, any defect in the judgment there, any failure to enter it there, he may institute the proper proceedings, which the law provides for, re-establish his judgment, and bring here a certified record of it, which would be conclusive.

Then, again, in the State of Vermont, in a case involving the very question of naturalization, the supreme court of that State held this language:

> The only other legal question which it is necessary for us to pass upon is whether parol evidence was admissible to prove the naturalization of a foreigner. A certified copy of the record of the court in which one is naturalized is the legitimate evidence of the fact. Parol evidence to prove naturalization is inadmissible.

What is plainer than that? I will next invite the attention of gentlemen to an adjudication by the supreme court of my own State, Hall *vs.* Hudson, twentieth volume Alabama Reports. It is there held—

> that a paper purporting to be a decree on the final settlement of an estate by the judge of the orphans' court and filed among the papers of the case with the indorsement thereon: "Decree in the estate of James Hudson, deceased, filed second Monday April, 1847;" also signed by the judge, is not the judgment of the court until entered on the record.

[Here the hammer fell.]

Mr. OATES. I should like two minutes more.

Mr. CRISP. I yield the gentleman two minutes more.

Mr. OATES. In the case of Hinson against Wall the same court—I have but time to read the syllabus—held—

> that a mere memorandum of the clerk stating the amount of damages assessed by the jury with the words "this judgment for the sum so found added" does not constitute a judgment on which an action of debt can be maintained, although the clerk certifies in proper form that it is "a true and perfect transcript and exemplification of the record." And the proceedings of the courts of the several States composing the Union will be presumed to be governed by the common law until the contrary is shown.

Just one authority more, and that is a very ancient but a good one. I refer to Blackstone's Commentaries, which, like the Constitution of the United States in the estimation of some gentlemen, is well-nigh obsolete.

Blackstone says:

> A court of record is that where the acts and judicial proceedings are enrolled on parchment for a perpetual memorial and testimony, which rolls are called the records of the court, and are of such high and supereminent authority that their truth is not called in question. For it is a settled rule and maxim that nothing shall be avered against a record. Nor shall any plea or even proof be admitted to the contrary. If the existence of a record be denied it shall be tried by nothing but itself; that is, upon bare inspection whether there be any such record or no, else there would be no end of disputes.

And yet gentlemen assert that where no judgment was ever entered it is competent for them to come here and prove by parol that such judgment was rendered. I utterly deny the proposition, and to my mind if this House allows this gentleman to retain his seat in direct violation of the well-established rules of evidence, they will violate that clause of the Constitution which declares an alien ineligible until he is naturalized. [Applause.]